FILED

OCT 19 2012

DEPARTMENT OF REAL ESTATE

By K. Contreras

BEFORE THE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of ERIC BERNARDINO BECERRA, Respondent.	NO. H-2695 FR OAH NO. 2012010467

DECISION

The Proposed Decision dated September 7, 2012, of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

This Decision shall become effective at 12 o'clock noon on November 8, 2012.

IT IS SO ORDERED October 16, 2012.

Real Estate Commissioner

By WAYNE S. BELL
Chief Counsel

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against: ERIC BERNARDINO BECERRA, Respondent.	Case No. H-2695 FR OAH No. 2012010467

PROPOSED DECISION

Catherine B. Frink, Administrative Law Judge, State of California, Office of Administrative Hearings (OAH), heard this matter on August 14, 2012, in Fresno, California.

Mary F. Clarke, Counsel, Department of Real Estate (Department), represented Luke Martin, a Deputy Real Estate Commissioner of the State of California (complainant).

Eric Bernardino Becerra was present and was represented by Daniel Woodford, Attorney at Law.

Antonia Espindola, Certified Court Interpreter, provided Spanish translation for complainant's witnesses. Evidence was received, the record closed, and the matter was submitted for decision on August 14, 2012.

FACTUAL FINDINGS

1. Complainant made and filed this Accusation in his official capacity on or about November 28, 2011 (2011 Accusation).

The 2011 Accusation was amended at hearing as follows: page 2, paragraph 5, line 22 – change "Ciciaco" to "Ciriaco"; page 2, paragraph 5, line 24 – change "Drive" to "Circle."

License and Prior Disciplinary History

2. Respondent is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code[1] as a real estate salesperson. The Department originally issued respondent's salesperson license on September 4, 2004.

3. Accusation No. H-2281 FR was filed against respondent on July 10, 2008 (2008 Accusation). On March 19, 2009, respondent signed a Stipulation and Agreement (Stipulation) to resolve the issues raised by the 2008 Accusation. The Stipulation became effective on May 6, 2009. By the terms of the Stipulation, respondent "[chose] not to contest" the factual allegations contained in the 2008 Accusation, "but to remain silent and understands that, as a result thereof, these factual statements will serve as a prima facie basis for the 'Determination of Issues' and 'Order' set forth below. The Real Estate Commissioner shall not be required to provide further evidence to prove such allegations."

4. As set forth in Paragraph I. of the Determination of Issues, respondent stipulated that his acts and/or omissions, as described in the 2008 Accusation, violated section 10130 (acting in the capacity of a broker without a license) in conjunction with section 10177, subdivision (d) (willful disregard or violation of the Real Estate Law), as well as section 10176, subdivision (b) (making any false promises of a character likely to influence, persuade or induce), and section 10177, subdivision (g) (demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license).

5. Respondent's acts and/or omissions as described in the 2008 Accusation, which formed the basis for the stipulated grounds for disciplinary action, included the following:

A. Respondent, while employed by Universal Mortgage and Sales, Inc., (Universal) in 2006, engaged in activities related to the operation and conduct of a mortgage loan brokerage business, where respondent solicited lenders and borrowers for loans secured directly or collaterally by liens on real property, and where such loans were arranged, negotiated, processed, and consummated by respondent on behalf of others for compensation or in expectation of a compensation.

B. Respondent permitted Universal to employ Robert Sandoval, an unlicensed individual, to perform acts and conduct real estate activities for which a license was required, including the negotiation and arrangement of mortgage loans to finance the purchase and sale of real property, involving three separate transactions.

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[1] Unless otherwise stated, all statutory references are to the California Business and Professions Code.

C. In two of the transactions, respondent and Mr. Sandoval made false statements to the borrowers, by concealing and failing to disclose to the borrower during the time they were arranging, negotiating, and processing the loans, that they expected to receive a rebate from the lender paid outside escrow in addition to the estimated commission.

D. In connection with all three transactions, respondent and Mr. Sandoval made material misstatements of facts to the lenders involved, by misrepresenting the nature of the employment held by the borrowers, as well as the monthly income of the borrowers.

6. On May 28, 2009, the Department issued a restricted salesperson license to respondent subject to the provisions of section 10156.7, and to enumerated additional terms, conditions, and restrictions imposed under authority of sections 10156.6 and 10156.7, including a requirement that respondent take and pass the Professional Responsibility Examination administered by the Department, within six months from the effective date of the Stipulation.

7. As a consequence of the filing of the 2011 Accusation, the Department issued an Order Suspending Restricted Real Estate License to respondent, effective December 7, 2011, under the authority of section 10156.7. Respondent's restricted license remains suspended pending final determination made after hearing on the 2011 Accusation.

8. Respondent's restricted salesperson license will expire on May 15, 2013, unless renewed or revoked.

Loan Modification Activities

9. On July 1, 2008 respondent's company, EBB Investments, Inc. (EBB), entered into an agreement (Agreement) with RMR Group Loss Mitigation, LLC (RMR) to "perform certain management services for the Fresno branch" of RMR "as an independent contractor." The Agreement described RMR as "a limited liability company which performs loss mitigation, loan modification, and other mortgage services." EBB was designated as the "Office Manager" in the Agreement, and RMR was designated as the "Company." According to the terms of the Agreement, EBB was appointed as the manager for the Fresno branch of RMR. EBB's duties included the following:

> **2.2. Duties:** With this Agreement, Office Manager, as representative of Company, shall be responsible for the following: i) Office Manager shall handle interviews and staffing of office; ii) Office Manager will oversee staff efficiency, attendance, and performance; iii) Office Manager will oversee accounting along with salaries and

payroll; iv) Office Manager will oversee IT (Information Technology) and office equipment; v) Office Manager will furnish and maintain office supplies. These services are subject to change in the future with written notification by Company.

2.3 Limitations: The following are limitations to Office Manager duties and responsibilities under this Agreement: i) Office Manager shall not bind Company to any contract until Office Manager obtains written consent from Michael Armendariz, Ruben Curiel, or Ricardo Haag of Company or other individual designated by Company; ii) Office Manager shall not open any checking or savings accounts in the name of the Company or any of its officers, members, or other parties; and iii) All marketing and/or publications must be approved by Company and/or its counsel prior to use.

10. Under section 3 of the Agreement, "Payments," EBB was to collect a monthly salary of $5,500; services were to be provided solely as an independent contractor, and the salary was not subject to tax withholding. Under "Ancillary Rights," the Agreement stated: "Office Manager shall have no right to any revenues, fees or other payments in connection with, or as a result of, Services or with respect to products and or services, promoted on or by the Company, except as expressly provided in this Section 3."

11. Respondent testified that RMR decided to employ the services of Karla Shippey/Shippey & Associates, in October 2008, "after SB 94 came out." However, SB 94, which amended various laws relating to the acceptance of fees associated with mortgage loan modifications, was passed in September 2009 and took effect on October 11, 2009; therefore, the decision of RMR to associate with Shippey & Associates could not have been a response to this legislation.

12. Karla Shippey was the principal attorney of Shippey & Associates, P.C. In written materials provided by respondent to prospective clients seeking loan modification services from RMR, Shippey & Associates is described as "a professional corporation (PC) of attorneys licensed to practice law in the State of California. We represent homeowners in California seeking loss mitigation or mortgage mitigation." The form letter (Introduction Letter) also stated:

> We have given instructions to _____ from RMR Group to answer any questions about our firm. However, be aware that RMR Group will not provide information or advice about litigating loss mitigation and mortgage renegotiation.

13. In a separate document, entitled "Declaration and Consent to Multiple Representations," also on the letterhead of Shippey & Associates, it states, in part:

> In certain situations it is common for both parties to hire one law firm to be represented.... In this case, you are requesting the assistance of Shippey & Associates, P.C., for your mortgage loss mitigation or mortgage loan modification transaction.
>
> In order to provide the best possible service, Shippey & Associates, P.C., will involve a processing company RMR Group, to coordinate all aspects of this transaction which do not involve legal services. In doing so, Shippey & Associates, P.C., is able to reduce costs and time required to complete your transaction.
>
> At the same time, Shippey & Associates, P.C., must state that it serves as a legal advisor to RMR Group for the purpose of advising in legal matters faced by the company.... As long as you and RMR Group have the same interest in the transaction, there should not be a conflict of interest.

14. Loan modification clients entered into a standard Attorney-Client Agreement with Shippey & Associates (Contract) to "provide legal services related to loss mitigation and mortgage renegotiation." The Contract stated, in part:

> You are retaining the law firm, not a specific person. The requested services may be performed by any attorney of the Law Firm, but it is anticipated that legal services will be provided by Attorney Karla Shippey. The Law Firm reserves the right to engage additional persons, including legal assistants, paralegals, secretaries, loan processors, negotiators, mediators, brokers, and others at the sole discretion of the Law Firm for purposes of assisting in the provision of services. In any event, all such persons shall be directed and supervised by the attorney providing the legal services....

15. Contract Appendix A , "Compensation Terms and Conditions," listed the following fees and payment schedule, for a total of $3,295: $1,000 – "Initial retainer" (to be paid on expiration of a three-day rescission period after signing the Contract); $1,100 – to be paid when "contact made with lender and communication of financials (estimated 15 days from the date of the Contract); $1,100 – to be paid when

"receive workout program from lender" (estimated 30 days form the date of the Contract); and $95 – "Closing" (estimated 45 days from the date of the Contract). The client/borrower was given the option of making "payment IN FULL IN ADVANCE." If not paid in full, the client was required to pay at least the $1,000 retainer, and subsequent installment payments were each subject to a three percent "processing fee." The Contract and Appendix A both stated that the initial $1,000 retainer was nonrefundable.

16. Another standard document used in the loan modification process, entitled "Confirmation of Service," was a checklist of various questions to be asked of the client, with the answers recorded on the form at the time the Contract was signed. This document was on the letterhead of Shippey & Associates. Section 2 of the Confirmation of Service form stated:

> The agreement you executed today is with the law firm of Shippey & Associates, P.C. Do you understand the above statement? YES/NO
>
> Through the agreement, Shippey & Associates is allowed to employ paralegals, loan processors to assist you. Shippey & Associates plans to employ RMR Group to assist with the loan process. Do you understand the above statement? YES/NO
>
> Both Shippey & Associates and RMR Group are private and separate companies. They are not governmental agencies and are not connected with your mortgage lender. Do you understand the above statement? YES/NO

17. At hearing, respondent stated that his normal duties including hiring and overseeing the office employees and office operations. He managed a staff of about 25 employees in the Fresno office. Marketing for the business venture was handled by RMR. Respondent negotiated and purchased advertising on behalf of RMR, and was thereby involved in the solicitation of clients for loan modifications. While he was initially paid a salary, his compensation was later "incentivized," and he earned a percentage of the monthly amount collected from clients. He occasionally became involved in processing the loan modifications, if there was not enough office staff to handle all of the transactions.

Respondent did not have the authority to deposit or cash checks on behalf of RMR or Shippey & Associates. Checks were typically made out to Karla Shippey or to Shippey Law Office. Elizabeth Gomez handled the accounting duties in the Fresno office, and she gathered and logged in payments to the Shippey & Associates account.

Ms. Shippey came into the office about once per week. According to respondent, she sometimes met with clients, she reviewed files, and collected money. Ms. Shippey's name was "on the wall" in the office, and was mentioned in radio and other advertising. Respondent testified that Ms. Shippey told him that "this complied with SB 94." However, since SB 94 was not in effect at any time that respondent was engaged in providing services to RMR, his testimony was not credible.

18. A Cease-and-Desist Order was issued in connection with the activities of RMR and Karla Shippey/Shippey & Associates in July 2009.[2] Respondent immediately "walked away and ceased his activities." After respondent abandoned the Fresno office, the landlord contacted the Department, because files had been left behind in the office, which appeared to be client loan modification files belonging to RMR. Department Special Investigator Rene Esquivel retrieved the files from the office. After reviewing the files, he determined that respondent had obtained information for loan modifications and solicited/facilitated the collection of advance fees from borrowers Ciriaco Gallardo, Ismael and Irma Meza, and Maria Jauregui, as set forth below.

Gallardo Loan Modification

19. On December 28, 2008, Mr. Gallardo contacted respondent's office to inquire about a loan modification for the property located at 11567 3rd Place, Hanford, California. Mr. Gallardo was responding to a radio advertisement for loan modification services offered by RMR. Respondent obtained information from Mr. Gallardo and made an appointment for Mr. Gallardo to come to the office. On January 7, 2009, Mr. Gallardo provided information to respondent concerning his financial situation. He was provided a copy of the Introduction Letter, and he signed copies of the Contract, the Declaration and Consent to Multiple Representations, and the Confirmation of Service. Respondent filled out the paperwork for Mr. Gallardo. In accordance with the Contract, Mr. Gallardo submitted two money orders, totaling $600, made out to "the law office of Karla Shippey," and he charged an additional $400 on his credit card, for a total of $1,000 paid on January 9, 2009. On January 31, 2009, Mr. Gallardo submitted two money orders, totaling $765, made out to "the law office of Karla Shippey," in accordance with the payment schedule attached to the Contract, which required payment of $1,000 as the initial retainer, plus three payments of $765, due on February 4, March 4, and March 18, 2009. The total amount of the fee to be paid was $3,295, of which Mr. Gallardo paid $1,765.

20. Mr. Gallardo was unsuccessful in his attempt to obtain a loan modification for the property. He lost his home to foreclosure in June of 2011.

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[2] It was unclear from the evidence whether EBB Investments, Inc., and/or respondent individually, were named in the Cease-and Desist Order.

Meza Loan Modification

21. On February 16, 2009, Ismael Meza Mendez and Irma Meza (collectively, Mr. and Mrs. Meza) went to respondent's office to complete paperwork in connection with a loan modification for the property located at 1874 Concord Circle, Hanford, California. Mr. and Mrs. Meza sought the services of RMR after hearing a radio advertisement for loan modifications. Mr. and Mrs. Meza provided information to respondent concerning their financial situation. They were provided a copy of the Introduction Letter, and they signed copies of the Contract, the Declaration and Consent to Multiple Representations, and the Confirmation of Service. Respondent filled out some of the paperwork for Mr. and Mrs. Meza. They were also assisted by other office personnel, including "Sergio" and "Eli" (Elizabeth Gomez). In accordance with the Contract, Mr. Meza submitted three money orders, totaling $1,300, made out to "the law office of Karla Shippey," for a total of $1,300 paid on February 18, 2009. On March 11, 2009, Mr. Meza submitted two money orders, in the total amount of $665, made out to "RMR Group," with an address of "956 W. Mammoth Pool Way, Hanford." Mr. Meza acknowledged at hearing that he had a second loan modification application for the Mammoth Pool Way property, and some of the documents in the file pertain to Mammoth Pool Way, while others pertain to Concord Circle. Mr. Meza testified that he and Mrs. Meza were living on Mammoth Pool Way in the spring of 2009, but that the payment was for Concord Circle. On April 16, 2009, Mr. Meza submitted two money orders, totaling $665, made out to "the law office of Karla Shippey." The above payments were made in accordance with the payment schedule attached to the Contract, which required payment of $1,300 as the initial retainer, plus three payments of $665, due on March 12, April 2, and April 16, 2009. The total amount of the fee to be paid was $3,295, of which Mr. Meza paid $2,630. Mr. Meza gave the money orders to Sergio or to Eli.

22. Mr. and Mrs. Meza were unsuccessful in their attempt to obtain a loan modification for the Concord Circle property. Mr. and Mrs. Meza still own the property as of the date of hearing.

Jauregui Loan Modification

23. On February 19, 2009, Ms. Jauregui responded to a radio advertisement promoting loan modifications services and contacted respondent's office to inquire about a loan modification for the property located at 1103 Tempe Drive, Hanford, California. On February 28, 2009, Ms. Jauregui provided information to respondent concerning her financial situation. She was provided a copy of the Introduction Letter, and she signed copies of the Contract, the Declaration and Consent to Multiple Representations, and the Confirmation of Service. Respondent filled out the paperwork for Ms. Jauregui. In accordance with the Contract, Ms. Jauregui submitted three money orders, totaling $1,500, made out to "the law office of Karla Shippey," paid on February 28, 2009. On March 16, 2009, Ms. Jauregui submitted a $600 money order, made out to "the law office of Karla Shippey." On May 4, 2009, Ms.

Jauregui submitted a $600 money order, made out to "Arthur Aldridge, Esq."[3] The above payments were made in accordance with the payment schedule attached to the Contract, which required payment of $1,500 as the initial retainer, plus two payments of $600, due on March 24 and April 21, 2009, and one payment of $595, due on May 5, 2009. The total amount of the fee to be paid was $3,295, of which Ms. Jauregui paid $2,700. Ms. Jauregui gave the payments to "Dora" at respondent's office; Dora assisted Ms. Jauregui in filling out the money orders.

24. Ms. Jauregui was unsuccessful in her attempt to obtain a loan modification for the property. She lost her home to foreclosure in October of 2009.

Unlicensed Activity

25. Section 10130 states that, "[i]t is unlawful for any person to engage in the business, act in the capacity of, advertise or assume to act as a real estate broker or a real estate salesman within this state without first obtaining a real estate license from the department." Section 10131, subdivision (d) provides:

> A real estate broker within the meaning of this part is a person who, for a compensation or in expectation of a compensation, regardless of the form or time of payment, does or negotiates to do one or more of the following acts for another or others:
>
> [¶]...[¶]
>
> (d) Solicits borrowers or lenders for or negotiates loans or collects payments or performs services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity.

26. Section 10133.1, subdivision (a)(5) provides that section 10130, subdivision (d), does not apply to "[a]ny person licensed to practice law in this state, not actively and principally engaged in the business of negotiating loans secured by real property, when that person renders services in the course of his or her practice as an attorney at law, and the disbursements of that person, whether paid by the borrower or other person, are not charges or costs and expenses regulated by or subject to the limitations of Article 7 (commencing with Section 10240), and the fees and disbursements are not shared, directly or indirectly, with the person negotiating the loan or the lender."

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[3] Respondent testified that Mr. Aldridge started working with RMR after RMR and Ms. Shippey had "differences." Respondent did not know whether Mr. Aldridge had a real estate license.

27. As reflected in the paperwork disseminated by respondent to loan modification clients, Ms. Shippey/Shippey & Associates was actively and principally engaged in the business of "loss mitigation, loan modification, and other mortgage services," and was thus engaged in the business of negotiating loans secured by real property. Absent evidence to the contrary, it appears that Ms. Shippey was not exempt from the requirement that she hold a broker's license issued by the Department to offer the services she provided in connection with the activities of RMR.

28. Ms. Shippey was not licensed by the Department as a real estate broker. Therefore, she could not legally supervise the activities performed by respondent (as a real estate salesperson) for which a real estate broker license was required.

29. RMR was not licensed by the Department as a real estate broker. At least one of the principals of RMR, Michael Armendariz, was a licensed real estate broker during the relevant period. However, respondent did not "place" his salesperson license with Mr. Armendariz, because he was advised by Ms. Shippey that a real estate license was unnecessary to perform loan modification services which were "under the umbrella" of her law license.

30. Respondent, as the office manager of the Fresno RMR office, either personally accepted or supervised the individuals who accepted advance fee payments from Mr. Gallardo, Mr. and Mrs. Meza, and Ms. Jauregui. Respondent negotiated the advance fee agreements directly with the clients, explaining the loan modification program and obtaining their signatures on forms provided by Karla Shippey/Shippey & Associates.

31. By reason of the facts set forth in Findings 12, 14, 17, 19, 21, 23 and 27 through 30, respondent engaged in conduct for which a real estate broker or salesperson's license was required. Respondent performed licensed activities at a time when he was not under the supervision of a licensed real estate broker. He supervised individuals who were unlicensed, and who also performed activities for which a license was required. Therefore, respondent acted in the capacity of real estate broker without a license.

32. Respondent contended that he relied on the advice of counsel (Ms. Shippey) as the basis for his good-faith belief that he did not need a real estate license to perform the services he provided to RMR and Shippey & Associates (Findings 17, and 29). His assertion is undercut, to a great extent, by the fact that he claimed Ms. Shippey assured him that the operation of the business complied with SB 94, when in fact that legislation was not enacted until well after the Cease-and-Desist Order was served and respondent abandoned the business. (Findings 11 and 17.)

Fee Agreements/Advance Fee Collection

33. Section 10085.5, subdivision (a), states:

> (a) It shall be unlawful for any person to claim, demand, charge, receive, collect, or contract for an advance fee (1) for soliciting lenders on behalf of borrowers or performing services for borrowers in connection with loans to be secured directly or collaterally by a lien on real property, before the borrower becomes obligated to complete the loan or, (2) for performing any other activities for which a license is required, unless the person is a licensed real estate broker and has complied with the provisions of this part.

34. Section 10085 states, in pertinent part, that the Real Estate Commissioner "may require that any or all materials used in obtaining advance fee agreements, including but not limited to the contract forms, letters or cards used to solicit prospective sellers, and radio and television advertising be submitted to him or her at least 10 calendar days before they are used." The Commissioner may order that the materials not be used if he or she determines that the material, "when used alone or with any other matter, would tend to mislead." A violation of section 10085 "or of the rules, regulations, orders or requirements of the commissioner thereunder shall constitute grounds for disciplinary action against a licensee."

35. California Code of Regulations, title 10 (10 CCR), section 2970, governs the use of advance fee materials. 10 CCR section 2970, subdivision (a), provides that, "[a] person who proposes to collect an advance fee as defined in Section 10026 in the Code shall submit to the Commissioner not less than ten calendar days before publication or other use, all materials to be used in advertising, promoting, soliciting and negotiating an agreement calling for the payment of an advance fee including the form of advance fee agreement proposed for use."

36. Taken together, sections 10085, 10085.5, and 10 CCR section 2970, require that any person who seeks to claim, charge, collect, receive, or contract for an advance fee for providing services for borrowers in connection with loans to be secured by a lien on real property must: (1) be a licensed real estate broker; and (2) submit all materials to be used in advertising, soliciting, and negotiating advance fee agreements to the Commissioner for approval. The failure to do so is a violation of law and a grounds for disciplinary action against a licensee.

37. The materials used by respondent, acting on behalf of RMR and/or Karla Shippey/Shippey & Associates, to obtain advance fees from loan modification clients, were not submitted to the Department for review and approval. A records search confirmed that the Department at no time approved Advance Fee Contracts

and/or Advance Fee Advertising, or any other advance fee materials, for use by respondent.

Respondent's Evidence

38. Respondent has not performed loan modification services since July 2009.

39. After respondent left his employment with RMR, he became employed as a real estate salesperson in the employ of American Mortgage Partners, Inc., a corporate real estate broker, in October 2009. Respondent began working as a mortgage loan originator in early 2010. He remained at American Mortgage Partners, Inc. until October 2011. Respondent is currently employed at Neighbor's Financial Corporation, under the jurisdiction of the National Mortgage Licensing System (NMLS). Respondent has a Mortgage Loan Originator (MLO) endorsement through the Department of Corporations. It is respondent's understanding that he does not need a real estate license to work in his current occupation.

40. Respondent submitted nine letters of support, which were received in evidence and considered to the extent permitted under Government Code section 11513, subdivision (d).[4] Two of the letters praised respondent's activities in support of the community: Ray Zalpa, president of the Fresno/Madera Chapter of the National Association of Hispanic Real Estate Professionals, noted that respondent was recently voted to become the Membership Director of the chapter, and that membership had grown from 25 to over 150 members under his leadership. Mr. Zalpa is a licensed realtor who has worked with respondent on transactions over the past eight years. He praised respondent's diligence in pursuing the best interest of his clients. Walmer Medina wrote a letter dated August 7, 2012, in which he described respondent as "an absolute professional when it comes to Real Estate, a career mentor and a true philanthropist for community programs." He described respondent's fundraising support for a traveling baseball team of underprivileged youth that was organized by Mr. Medina.

41. Respondent submitted a letter from Ricardo and Ruby Miranda, and a letter from Christina Jalomo, praising respondent's excellent service in obtaining loans for them, and expressing satisfaction with respondent's work.

42. Respondent submitted a letter dated August 2, 2012, from Amar Alamary, a former client who obtained loan modification services from RMR. He dealt directly with respondent who helped him coordinate with RMR's "team of

[4] Government Code section 11513, subdivision (d) states in pertinent part, "Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. ..."

negotiators in Southern California." He obtained a loan modification in two months. His letter stated that he had "read the accusation against Eric and I believe it to be false, as I never paid him any money nor did he ever negotiate on my behalf."

43. Respondent submitted a letter from Letha Wilson, dated March 2, 2012, who stated that respondent had been her colleague for several years, and that she found him to be efficient, honest, and extremely dedicated.

44. John Shore is the Executive Director of the Community Housing Council (CHC) in Fresno. In a letter dated August 13, 2012, Mr. Shore stated that he had known respondent for six years, and has found him to be an "honest person and a true professional." Respondent has been a guest speaker at CHC home buyer seminars and has volunteered for Project Home Owner events. Respondent has assisted individuals in qualifying for the CHC Home Buyer Grant.

45. Greg Rieux is the Director of Coaching for the Central Valley Soccer Academy. He knows respondent as a youth soccer coach, where respondent "has always been dedicated to teaching the importance of integrity and hard work." Respondent has also assisted him in purchasing a home, and Mr. Rieux has referred others to respondent, all of whom have reported positive experiences working with respondent.

46. Manuel Chavez, Jr., is a licensed real estate broker who has known respondent since 2005, when they worked on a transaction together, and later became friends. He has observed that respondent "has always demonstrated integrity, loyalty, dedication, and unselfishness" in his dealings with clients.

47. In their letters, Ms. Wilson, Mr. Shore, Mr. Rieux, and Mr. Chavez all state that they have read the charges in the 2011 Accusation, and believed them to be without merit. It is impossible to ascertain whether their opinion of respondent would change if they knew that, in fact, the allegations were true. Similarly, reasons stated by Mr. Alamary in support of his belief that the Accusation was false demonstrated a lack of understanding of the issues giving rise to the allegations.

LEGAL CONCLUSIONS

Applicable Statutes and Regulations

1. It is unlawful for any person to engage in the business, act in the capacity of, advertise or assume to act as a real estate broker or a real estate salesman within this state without first obtaining a real estate license from the department. (Bus. & Prof. Code, § 10130.)

2. A real estate broker is "a person who, for compensation or in expectation of a compensation, regardless of the form or time of payment, does or negotiates to do one or more of the following acts for another or others: ... (d) Solicits borrowers or lenders for or negotiates loans or collects payments or performs services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity." (Bus. & Prof. Code, § 10131, subd, (d)."

3. Advance fee agreements and all materials used in obtaining such agreements, including contract forms, letters or cards used to solicit prospective sellers, and radio and television advertising must be submitted to the commissioner at least 10 days before they are used. The commissioner may order that the materials not be used. The commissioner may determine the form of the advance fee agreements and all material used in soliciting prospective owners and sellers. A violation of this provision is grounds for disciplinary action against a licensee. (Bus. & Prof. Code, § 10085; Cal. Code Regs., tit. 10, § 2970.)

4. It is unlawful for any person to claim, demand, charge, receive, collect, or contract for an advance fee: (1) for soliciting lenders on behalf of borrowers or performing services for borrowers in connection with loans to be secured directly or collaterally by a lien on real property, before the borrower becomes obligated to complete the loan, or (2) for performing any other activities for which a license is required, unless the person is a licensed real estate broker and has complied with applicable statutes. (Bus. & Prof. Code, § 10085.5, subd. (a).) A violation of this section is "a public offense" punishable by a fine not exceeding $10,000 or jail for a term not exceeding six months. (Bus. & Prof. Code, § 10085.5, subd. (c).)

5. Pursuant to section 10177, the Commissioner may suspend or revoke the license of a real estate licensee who has engaged in any of the following acts:

> (d) Willfully disregarded or violated the Real Estate Law or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law.

Cause for Discipline

6. The Department met its burden of establishing legal cause for disciplinary action against respondent's license by clear and convincing evidence by reason of the matters set forth in Factual Findings 9 through 37.

7. Cause for revocation of respondent's real estate salesperson license exists pursuant to sections 10130 and 10131, in conjunction with section 10177, subdivision (d), by reason of Factual Findings 12, 14, 17, 19, 21, 23, and 27 through 32, and Legal Conclusion 9 (unlicensed activity).

8. Cause for revocation of respondent's real estate salesperson license exists pursuant to sections 10085 and 10085.5, subdivision (a); and 10 CCR section 2970 in conjunction with section 10177, subdivision (d), by reason of Factual Findings 15, 17, 19, 21, 23, and 33 through 37, and Legal Conclusion 9 (failure to obtain review of advance fee agreements and materials; contracting for, receiving, and collecting advance fees for loan modification services, by an individual who is not a real estate broker, and who has not complied with applicable statutes and regulations).

9. The 2011 Accusation alleged that respondent's conduct violated 10 CCR section 2972, which states:

> Each verified accounting to a principal or to the commissioner as required by Section 10146 of the Code shall include at least the following information:
>
> (a) The name of the agent.
>
> (b) The name of the principal.
>
> (c) Description of the services rendered or to be rendered.
>
> (d) Identification of the trust fund account into which the advance fee has been deposited.
>
> (e) The amount of the advance fee collected.
>
> (f) The amount allocated or disbursed from the advance fee for each of the following:
>
> (1) In providing each of the services enumerated under (c) above.
>
> (2) Commissions paid to field agents and representatives.
>
> (3) Overhead costs and profit.
>
> (g) In cases in which disbursements has been made for advertising, a copy of the advertisement, the name of the publication, the number of the advertisements actually published and the dates that they were carried.

(h) In the case of an advance fee for the arrangement of a loan secured by a real property or a business opportunity, a list of the names and addresses of the persons to whom information pertaining to the principal's loan requirements were submitted and the dates of the submittal.

Complainant did not introduce evidence on this issue, and did not allege a violation of section 10146. Therefore, no cause for discipline was established under 10 CCR section 2972.

Disciplinary Considerations

10. Respondent currently holds a restricted real estate salesperson license, as a result of disciplinary action taken in 2009, based upon conduct that took place in 2006. At the time respondent engaged in the acts that constitute cause for disciplinary action in the present case, the 2008 Accusation had been filed, but the matter had not yet been resolved, and respondent still held an unrestricted real estate license.

11. Nevertheless, respondent's conduct in 2009 continued a pattern established in 2006, in which respondent acted in the capacity of a real estate broker without holding a broker license. He supervised unlicensed individuals and permitted them to engage in activities for which a real estate license was required. He solicited loan modification agreements that included advance fees on behalf of Karla Shippey/Shippey & Associates, without following the procedures to secure approval of solicitation materials from the Department. He did not independently investigate his duty to comply with the Real Estate Law, and instead purportedly relied on the advice of Ms. Shippey.

12. Respondent was required to take and pass the Professional Responsibility Examination in 2009 as a condition of his restricted license. However, he did not demonstrate insight into his unlawful conduct in 2009, or express remorse for his activities.

13. Respondent's activities in the community are commendable. However, he has been unwilling or unable to conform his conduct to the requirements of the Real Estate Law. Under all of the facts and circumstances herein, revocation of respondent's license is necessary to protect the public.

ORDER

All licenses and licensing rights of Eric Bernardino Becerra under the Real Estate Law are REVOKED.

DATED: September 7, 2012.

Catherine B. Frink

CATHERINE B. FRINK
Administrative Law Judge
Office of Administrative Hearings

MARY F. CLARKE, Counsel (SBN 186744)
Department of Real Estate
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FILED
NOV 28 2011
DEPARTMENT OF REAL ESTATE
By D. Contreras

BEFORE THE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of ERIC BERNARDINO BECERRA, Respondent.	NO. H-2695 FR ACCUSATION

The Complainant, LUKE MARTIN, a Deputy Real Estate Commissioner of the State of California, for Accusation against ERIC BERNARDINO BECERRA (herein "Respondent"), is informed and alleges as follows:

1

The Complainant makes this Accusation in his official capacity.

2

At all times herein mentioned, Respondent was and is currently licensed and/or had license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) (herein "the Code").

3

At all times herein mentioned, Respondent was licensed by the State of California Department of Real Estate (herein the "Department") or had license rights as a real estate

salesperson. Respondent's salesperson license is and has been restricted since about May 6, 2009, which license will expire on about May 5, 2013.

4

At all times herein mentioned, Respondent engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker within the State of California on behalf of others, for compensation or in expectation of compensation within the meaning of Section 10131(d) of the Code, including the operation and conduct of a mortgage loan brokerage with the public wherein, on behalf of others, for compensation or in expectation of compensation, Respondent solicited lenders or borrowers for or negotiated loans or loan modifications or collected payments or performed services for borrowers or lenders or note owners in connection with loans or loan modifications secured directly or collaterally by liens on real property or on a business opportunity.

5

Respondent, at times herein mentioned, and while not employed by a real estate broker, solicited and induced the following borrowers to enter into loan modification agreements, prior to submission of said agreements to the Commissioner, and claimed, demanded, charged, received, collected or contracted for advance fees, in violation of Sections 10130 (performing license activities), 10085 (review of fee agreements), 10085.5 (collecting advance fees) of the Code, and Sections 2970 (review of fee agreements) and 2972 (accounting to the principal of advance fees collected) of Title 10, California Code of Regulations (herein "the Regulations"):

Borrower	Property Address	Date	Amount
Circiaco Gallardo	11567 3rd Place Hanford, CA 93230	1/7/09	$3,295
Ismael & Irma Meza	1874 Concord Drive Hanford, CA 93230	2/16/09	$3,295
Maria Jauregui	1103 Tempe Drive Hanford, CA 93230	2/28/09	$3,295

PRIOR DISCIPLINE

6

Effective May 6, 2009, in Case No. H-2281 FR, the Real Estate Commissioner revoked Respondent ERIC BERNADINO BECERRA's real estate salesperson license and granted Respondent the right to apply for a restricted salesperson license on terms and conditions for violations of Section 10130 in conjunction with Section 10177(d) of the Code, and Sections 10176(b) and 10177(g) of the Code.

7

The facts alleged above are grounds for the suspension or revocation of the licenses and license rights of Respondent ERIC BERNADINO BECERRA under Sections 10130, 10085, and 10085.5 of the Code and Sections 2970 and 2972 of the Regulations, in conjunction with Section 10177(d) of the Code.

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof a decision be rendered imposing disciplinary action against all licenses and license rights of Respondent under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) and for such other and further relief as may be proper under other applicable provisions of law.

LUKE MARTIN
Deputy Real Estate Commissioner

Dated at Fresno, California,
this 28th day of November, 2011.